

EXHIBIT 1

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PASSES, INC. and LUCY GUO

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

FAMOUS BIRTHDAYS, LLC, a
California limited liability company,

Plaintiff,

v.

PASSES, INC., a Delaware
corporation; and LUCY GUO, an
individual,

Defendants.

Case No. 2:24-cv-08364-CBM-SSC

**DEFENDANT'S SUR-REPLY TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Date: December 20, 2024

Time: 10:00 A.M.

Ctrm.: 8-D

Judge: Hon. Consuelo B. Marshall

Action Filed: September 27, 2024

1 **I. INTRODUCTION**

2 In Plaintiff's Reply in support of its Motion for Preliminary Injunction (Dkt.
3 30, "Reply"), Plaintiff Famous Birthdays LLC ("Plaintiff") introduces for the very
4 first time an argument based on previously-known facts. Defendant Passes, Inc.
5 ("Defendant") had no opportunity to address Plaintiff's new argument when
6 opposing the Motion. Allowing Plaintiff to raise a new argument prejudices
7 Defendant, absent Defendant's opportunity to respond.

8 If the Court is inclined to consider Plaintiff's belated allegations and argument,
9 Defendant is entitled to respond to Plaintiff's new argument that Passes' Wiki
10 "continue[s] to be indexed by Google, and Google search results continue to index
11 bios previously featured on Passes Wiki," (Dkt. 30-1 at ¶ 5) which is "diverting traffic
12 from Famous Birthdays," (Dkt. 30-1 at 11:15) thereby causing it irreparable harm.
13 See Dkt. 30-1 ¶¶ 3–6; Dkt. 30 at 11:13-16.

14 **II. Plaintiff's Claim Of Irreparable Harm Based On Indexed Google Search**
15 **Results Is A New And False Argument.**

16 In its Reply, Plaintiff acknowledges that Passes removed the Passes Wiki
17 biography pages (Dkt. 30-1 at ¶ 3) from public access—the visibility of which is a
18 core argument in support of its claim for injunctive relief. See, e.g., Dkt. 11 at 13:8-
19 14:11. Recognizing that Passes' removal is fatal to its Motion for Preliminary
20 Injunction, Plaintiff manufactured, in its Reply, a new basis for its purported harm.
21 Specifically, Plaintiff contends that Passes' Wiki "continue[s] to be indexed by
22 Google, and Google search results continue to index bios previously featured on
23 Passes Wiki," (Dkt. 30-1 at ¶ 5) which is "diverting traffic from Famous Birthdays,"
24 (Dkt. 30-1 at 11:15) and thereby causing it irreparable harm. See Dkt. 30-1 ¶¶ 3–6;
25 Dkt. 30 at 11:13-16; see also *United States v. Boyce*, 148 F. Supp. 2d 1069, 1085
26 (S.D. Cal. 2001) (district court held that "it is improper for a party to raise a new
27 argument in a reply brief"), *aff'd*, 36 F. App'x 612, 613 (9th Cir. 2002); *Bazuaye v.*
28 *I.N.S.*, 79 F.3d 118, 120 (9th Cir. 1996) ("Issues raised for the first time in the reply

1 brief are waived.”); *see also Provenz v. Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996)
2 (agreeing that no district court should review new evidence presented in a reply brief
3 without giving the non-moving party an opportunity to respond). If Google’s
4 indexing were causing Plaintiff harm, Plaintiff could and should have raised this issue
5 in its opening papers. It did not, thereby thwarting Defendant’s ability to address this
6 issue in its Opposition, in violation of unambiguous law.

7 This newly-minted basis for alleged harm is misleading, at best, and actually
8 false. As of December 5, Google search results do not return any inactive links to
9 Passes’ biographies. *See* Ex. A¹ at ¶ 7. Defendant bent over backwards to ensure that
10 links to its Wiki Pages were no longer publicly accessible. *See id.* at ¶¶ 3, 6, 7.
11 Moreover, Defendant has no control over when Google clears its indexing cache. *See*
12 *id.* at ¶ 5. Plaintiff cites no legal authority to support enjoining Defendant based on a
13 nonparty’s actions or inaction. There simply is none.

14 **III. CONCLUSION**

15 Plaintiff’s Motion for Preliminary Injunction should be dismissed as moot, as
16 it failed to establish any irreparable harm. Additionally, the Motion should be denied.

17
18 Dated: December 14, 2024

Respectfully submitted,

19 By: /s/ Neel Chatterjee

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28 ¹ Exhibit A attached hereto is the Declaration of Patrick Zhang dated December 5, 2024.

LOCAL RULE 11-6.1 CERTIFICATION

The undersigned counsel of record for Defendants PASSES, INC., (“Passes”) and LUCY GUO (“Ms. Guo”) certifies that this sur-reply is within the 10-page limit set forth in the Standing Orders for Hon. Consuelo B. Marshall.

/s/ Neel Chatterjee
NEEL CHATTERJEE

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Central District of California by using the CM/ECF system on December 14, 2024. I further certify that all participants in the case are registered CM/ ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct.
Executed on December 14, 2024.

/s/ Neel Chatterjee
NEEL CHATTERJEE